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4 DAVID G. VALLEY,
5 Plaintiff,
6 v.
7 BRIAN MARTIN, et al.,
8 Defendants.

9 Case No. 16-cv-00870-HSG (PR)
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**ORDER OF PARTIAL SERVICE AND
PARTIAL DISMISSAL; DENYING
MOTION FOR TEMPORARY
RESTRANDING ORDER**

Re: Dkt. No. 5

12
13 **INTRODUCTION**

14 On February 22, 2016, plaintiff, an inmate at San Quentin State Prison, filed this *pro se*
15 civil rights action under 42 U.S.C. § 1983 against staff and officials at the Lake County Jail, where
16 he was previously housed as a pretrial detainee. Plaintiff names as defendants Lake County
17 Sheriff Brian Martin, Lake County Lieutenant Findley, and various Jane and John Does. The
18 Court now conducts an initial review of the complaint pursuant to 28 U.S.C. § 1915A. Plaintiff is
19 granted leave to proceed in forma pauperis by separate order.

20 **DISCUSSION**

21 **A. Standard of Review**

22 A federal court must conduct a preliminary screening in any case in which a prisoner seeks
23 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
24 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
25 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
26 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),
27 (2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police*
28 *Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

1 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
2 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
3 statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon
4 which it rests.”” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although
5 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s
6 obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and
7 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
8 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*
9 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint
10 must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 1974.

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
12 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
13 the alleged violation was committed by a person acting under the color of state law. *See West v.*
14 *Atkins*, 487 U.S. 42, 48 (1988).

15 **B. Legal Claims**

16 **1. Conditions of Confinement**

17 Plaintiff alleges that he arrived at the Lake County Jail in December 2014. Starting around
18 August 2015, plaintiff began feeling “cold chills” as a result of the jail’s broken air conditioning
19 system, which was stuck in the on-mode. Starting around November 2015, plaintiff was forced to
20 retreat to his bed and remain under the covers for twenty hours a day in an attempt to stay warm
21 because the ventilation system would continuously blow cold air when not heating. On January
22 29, 2016, a maintenance worker informed plaintiff that the heaters had been broken for a long
23 time. Defendant Lake County Jail Lieutenant Findley denied plaintiff’s requests for jackets,
24 sweatshirts, and wool caps. Without warm clothing, plaintiff was unable to exercise during the
25 winter months. In addition to chills, plaintiff suffered from muscle spasms in his back and
26 depression as a result of the constant cold and confinement to his bed.

27 When a pretrial detainee challenges conditions of his confinement, the proper inquiry is
28 whether the conditions amount to punishment in violation of the Due Process Clause of the

1 Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). Even though pretrial
2 detainees' claims arise under the Due Process Clause, the Eighth Amendment serves as a
3 benchmark for evaluating those claims. *See Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996).
4 A prison official violates the Eighth Amendment when two requirements are met: (1) the
5 deprivation alleged must be, objectively, sufficiently serious, *Farmer v. Brennan*, 511 U.S. 825,
6 834 (1994) (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official
7 possesses a sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297).

8 The Ninth Circuit has held that this Eighth Amendment "deliberate indifference" test is the
9 appropriate standard for evaluating pretrial detainees' claims. *See Carnell*, 74 F.3d at 979
10 (holding that deliberate indifference to serious medical needs violates pretrial detainee's rights);
11 *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir.) (placement of pretrial detainees in
12 safety cells actionable under Due Process Clause only if prison officials act with deliberate
13 indifference), *amended*, 75 F.3d 448 (9th Cir. 1995); *Hallstrom v. City of Garden City*, 991 F.2d
14 1473, 1485 (9th Cir. 1993) (applying deliberate indifference standard to pretrial detainees'
15 conditions of confinement claims). The Supreme Court, however, has since suggested that
16 "deliberate indifference" might have a different meaning in the Due Process (pretrial detainee)
17 context from its meaning in the Eighth Amendment context. *See Kingsley v. Hendrickson*, 135 S.
18 Ct. 2466, 2473 (2015) (holding, in context of excessive force claim, pretrial detainee must show
19 only that force was objectively unreasonable).

20 Liberally construed, plaintiff states a cognizable Due Process claim, as against Sheriff
21 Martin and Lieutenant Findley, that his confinement in cold temperatures for extended periods
22 beginning in November 2015 amounted to unconstitutional punishment. *See Keenan v. Hall*, 83
23 F.3d 1083, 1091 (9th Cir. 1996) (holding prisoners are entitled to adequate heating), *amended*, 135
24 F.3d 1318 (9th Cir. 1998); *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (finding
25 plaintiff's claim that he was forced to sleep in cell with near freezing temperature constitutionally
26 cognizable); *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1396, 1409 (N.D. Cal. 1984) ("freezing"
27 cold temperature in cells violates Eighth Amendment), *reversed on other grounds by Toussaint v.*
28 *McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Thomas v. Ponder*, 611 F.3d 1144, 1151-52 (9th Cir.

1 2010) (“Exercise is one of the most basic human necessities protected by the Eighth
2 Amendment.”)

3 **2. Food Claims**

4 Plaintiff also alleges that he received “substandard” food at the Lake County Jail. This
5 allegation, without more, is insufficient to state a claim. Plaintiff does not assert that he received
6 inadequate food to maintain health. Nor does he specify the purported problems with the food.
7 Plaintiff will be given an opportunity to amend this claim, if he can truthfully do so. If plaintiff
8 elects to amend this claim, the amended complaint must specify the date(s) on which he received
9 inadequate food, name who caused him to be served inadequate food, and describe how the food
10 was inadequate.

11 **3. Unrelated Claims**

12 Plaintiff also makes claims against two John Doe defendants for housing plaintiff with a
13 cellmate known to be violent. Plaintiff alleges that the cellmate physically assaulted plaintiff,
14 causing him to suffer a skull fracture. Finally, plaintiff makes a claim against a Jane Doe
15 defendant for failing to provide plaintiff with his prescribed dosage of antidepressant medication.

16 These claims are DISMISSED without prejudice because they are unrelated by fact or law
17 to the conditions of confinement claims. Plaintiff is advised that a plaintiff may properly join as
18 many claims as he has against an opposing party. Fed. R. Civ. P. 18(a). But parties may be joined
19 as defendants in one action only “if any right to relief is asserted against them jointly, severally, or
20 in the alternative with respect to or arising out of the same transaction, occurrence, or series of
21 transactions or occurrences; and any question of law or fact common to all defendants will arise in
22 the action.” Fed. R. Civ. P. 20(a)(2). Put simply, claims against different parties may be joined
23 together in one complaint only if the claims have similar factual backgrounds and have common
24 issues of law or fact. *Coughlin v. Rogers*, 130 F.3d 1348, 1350-51 (9th Cir. 1997). If plaintiff
25 wishes to pursue relief for his unrelated claims, he must file a separate civil rights action or
26 actions.

27 **4. Doe Defendants**

28 Plaintiff is advised that the use of “Jane Doe” or “John Doe” to identify a defendant is not

1 favored in the Ninth Circuit. *See Gillespie v. Civiletti*, 629 F.2d at 642. Although the use of a Doe
2 defendant designation is acceptable to withstand dismissal of a complaint at the initial review
3 stage, using a Doe defendant designation creates its own problem: the person identified as a Doe
4 cannot be served with process until he or she is identified by his or her real name. If plaintiff files
5 an amended complaint, plaintiff must take steps promptly to discover the full name (i.e., first and
6 last name) of each of the Doe defendants and provide that information to the Court in his amended
7 complaint. The burden remains on the plaintiff; the Court cannot undertake to investigate the
8 names and identities of unnamed defendants.

9 **C. Motion for Temporary Restraining Order**

10 Along with his complaint, plaintiff filed a motion for a temporary restraining order seeking
11 to enjoin the Lake County Jail from serving him inadequate food. After filing the motion, plaintiff
12 was transferred to San Quentin State Prison. Plaintiff's transfer out of the Lake County Jail made
13 his requested interim relief a moot point. The motion for a temporary restraining order is therefore
14 DENIED as moot. (Dkt. No. 5.)

15 **CONCLUSION**

16 For the reasons stated above, the Court orders as follows:

17 1. Plaintiff's complaint states a cognizable Due Process claim, as against Sheriff
18 Martin and Lieutenant Findley, that his confinement in cold temperatures for extended periods
19 amounted to unconstitutional punishment.

20 2. Plaintiff's claims regarding his assault by a cellmate and regarding the denial of his
21 antidepressant medication are dismissed without prejudice to filing in another action or actions.

22 3. Plaintiff's claim regarding substandard food is dismissed with leave to amend to
23 remedy the deficiencies noted above, if plaintiff can truthfully do so. If plaintiff can cure the
24 pleading deficiencies described above, he shall file an AMENDED COMPLAINT within **twenty-**
25 **eight days** from the date this order is filed. The amended complaint must include the caption and
26 civil case number used in this order (C 16-0870 HSG (PR)) and the words AMENDED
27 COMPLAINT on the first page. Because an amended complaint completely replaces the original
28 complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*,

1 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint
2 by reference. **Failure to file an amended complaint within twenty-eight days and in**
3 **accordance with this order will result in a finding that further leave to amend would be**
4 **futile, and the deficient claim will be dismissed.**

5 4. If plaintiff does not wish to file an amended complaint, he shall so inform the Court
6 within **twenty-eight days** from the date of this Order.

7 5. The Clerk of the Court is directed to send plaintiff a blank civil rights complaint
8 form with his copy of this Order.

9 6. The Clerk shall issue summons and the United States Marshal shall serve, without
10 prepayment of fees, the summons, a copy of the complaint, all attachments thereto, and a copy of
11 this Order on **Sheriff Brian Martin and Lieutenant Findley at the Lake County Jail**. The Clerk
12 shall also mail a courtesy copy of this Order to the Office of the Lake County Counsel.

13 7. In order to expedite the resolution of this case, the Court orders as follows:

14 a. No later than **91 days** from the date this Order is filed, defendants must file
15 and serve a motion for summary judgment or other dispositive motion. If defendants are of the
16 opinion that this case cannot be resolved by summary judgment, defendants must so inform the
17 Court prior to the date the motion is due. A motion for summary judgment also must be
18 accompanied by a *Rand* notice so that plaintiff will have fair, timely and adequate notice of what
19 is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir.
20 2012) (notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), must be
21 served concurrently with motion for summary judgment). A motion to dismiss for failure to
22 exhaust available administrative remedies similarly must be accompanied by a *Wyatt* notice.
23 *Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

24 b. Plaintiff's opposition to the summary judgment or other dispositive motion
25 must be filed with the Court and served upon defendants no later than **28 days** from the date the
26 motion is filed. Plaintiff must bear in mind the notice and warning regarding summary judgment
27 provided later in this Order as he prepares his opposition to any motion for summary judgment.
28 Plaintiff also must bear in mind the notice and warning regarding motions to dismiss for non-

1 exhaustion provided later in this Order as he prepares his opposition to any motion to dismiss.

2 c. Defendants **shall** file a reply brief no later than **14 days** after the date the
3 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due. No
4 hearing will be held on the motion.

5 8. Plaintiff is advised that a motion for summary judgment under Rule 56 of the
6 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must
7 do in order to oppose a motion for summary judgment. Generally, summary judgment must be
8 granted when there is no genuine issue of material fact – that is, if there is no real dispute about
9 any fact that would affect the result of your case, the party who asked for summary judgment is
10 entitled to judgment as a matter of law, which will end your case. When a party you are suing
11 makes a motion for summary judgment that is properly supported by declarations (or other sworn
12 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
13 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
14 as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and
15 documents and show that there is a genuine issue of material fact for trial. If you do not submit
16 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
17 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand v.*
18 *Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App. A).

19 Plaintiff also is advised that a motion to dismiss for failure to exhaust available
20 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without
21 prejudice. You must “develop a record” and present it in your opposition in order to dispute any
22 “factual record” presented by defendants in their motion to dismiss. *Wyatt v. Terhune*, 315 F.3d
23 1108, 1120 n.14 (9th Cir. 2003).

24 (The *Rand* and *Wyatt* notices above do not excuse defendants’ obligation to serve said
25 notices again concurrently with motions to dismiss for failure to exhaust available administrative
26 remedies and motions for summary judgment. *Woods*, 684 F.3d at 939).

27 9. All communications by plaintiff with the Court must be served on defendants’
28 counsel by mailing a true copy of the document to defendants’ counsel. The Court may disregard

1 any document which a party files but fails to send a copy of to his opponent. Until defendants'
2 counsel has been designated, plaintiff may mail a true copy of the document directly to
3 defendants, but once a defendant is represented by counsel, all documents must be mailed to
4 counsel rather than directly to that defendant.

5 10. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
6 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
7 before the parties may conduct discovery.

8 11. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
9 Court informed of any change of address and must comply with the Court's orders in a timely
10 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
11 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
12 pending case every time he is moved to a new facility.

13 12. Any motion for an extension of time must be filed no later than the deadline sought
14 to be extended and must be accompanied by a showing of good cause.

15 13. Plaintiff is cautioned that he must include the case name and case number for this
16 case on any document he submits to the Court for consideration in this case.

17 14. Plaintiff's motion for a temporary restraining order is DENIED.

18 This Order terminates Docket No. 5.

19 **IT IS SO ORDERED.**

20 Dated: 4/25/2016

21 
22 HAYWOOD S. GILLIAM, JR.
23 United States District Judge

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